

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**April 28, 2022 at 10:00 a.m.**

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1.     [22-20108](#)-E-11     **KAMCARE, LLC**  
          [ELP-1](#)             **Gabriel Liberman**  
          **U.S. BANK TRUST NATIONAL**  
          **ASSOCIATION VS.**

**CONTINUED MOTION FOR RELIEF**  
**FROM AUTOMATIC STAY**  
**3-2-22 [19]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, and Office of the United States Trustee on March 2, 2022. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Relief from the Automatic Stay is <span style="color:red">xxxxxxx</span> .</b>
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U.S. Bank Trust National Association (“Movant”) seeks relief from the automatic stay with respect to Kamcare, LLC’s (“Debtor”) real property commonly known as 9589 Mainline Drive, Elk Grove, CA 95624 (“Property”). Movant has provided the Declaration of Jody Lee to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made twenty-two (22) post-petition payments, with a total of \$68,876.72 in post-petition payments past due. Declaration, Dckt. 21 at 3.

In addition to requesting relief from the stay pursuant to 11 U.S.C. § 362(d)(1) for cause based on the lack of payments, it is also asserted there is no equity in the Property for the Debtor or the estate, the Debtor stating under penalty of perjury in the Schedules that it has an equitable interest with a value of \$0.00.

## **OPPOSITION FILED BY DEBTOR IN POSSESSION<sup>1</sup>**

Debtor in Possession filed an opposition on April 21, 2022. Dckt. 37. Debtor's representative, Kathy Jones ("Representative Jones"), states the opposition was filed late because Representative Jones was not able to provide necessary documents to Debtor's counsel until April 19, 2022. Declaration, Dckt. 38. Representative Jones requests the court allow the opposition. *Id.*

Debtor provides the following timeline establishing their interest in the property Opposition, Dckt. 37:

1. Debtor operates the Property under a commercial lease with Kaitlin A. Jones ("Trustee Jones"), Trustee for Kamlomar Family Irrevocable Trust (the "Trust").
2. The Property was subject to probate following the death of Mildred Alma Wilson. Representative Jones was appointed the administrator of Ms. Wilson's estate.
3. August 2, 2020 - Representative Jones as administrator quitclaimed the property to herself, which was recorded with Sacramento Records Office on August 5, 2020 (Exhibit A, Dckt. 39).
4. August 2, 2020 - Representative Jones executed a second quitclaim deed transferring the Property to Trustee Jones, which was recorded with Sacramento Records Office on August 5, 2020 (Exhibit B, Dckt. 39).
5. August 2, 2020 - Trustee Jones executed a document titled "Kamcare, LLC Legal Equitable Property Ownership" granting 30% Property ownership interest to Debtor (Exhibit C, Dckt. 39). The Deed had a condition Debtor is to utilize the Property for home business and if Debtor failed to operate as such the Property would vest back to the

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<sup>1</sup> In the Opposition, the fiduciary Debtor in Possession has chosen to create a defined term to identify itself, acting in its fiduciary capacity, as "Debtor." As is well known to bankruptcy attorneys and judges, the term "Debtor" is statutorily defined by Congress in 11 U.S.C. § 101(13). While in a Chapter 11 case the debtor may also serve as the debtor in possession fiduciary to the bankruptcy estate, in so serving it is not "the debtor." This is akin to when one family member volunteers to serve as the trustee of the family trust. In that role, he/she is the trustee, not "Joe/Jolene Family Member" and cannot act in his/her own interests to the detriment of the beneficiaries of the trust.

Trust. Debtor never stopped operating as a home based business.

- a. Upon the court's review of this document, Kamcare LLC was vested thirty (30) percent absolute ownership in the Property so long as "THE WHOLE OR ANY PART OF SAID PROPERTY SHALL BE USED TO CARRYOUT AND OR CONDUCT THE DAY TO DAY BUSINESS OF KAMCARE, LLC . . . ." Exhibit C, Dckt. 39. If the property is no longer used as a home based business, the property share interest of thirty (30) percent automatically goes back to the Trust.

Debtor provides no evidence as to whether this deed and indicates that it "need not be recorded in order to convey the ownership interest in the property . . . ." Opposition at 4:7-9.

#### Equity Cushion

Debtor states there is an equity cushion providing adequate protection as Schedules A/B list the Property having a value of \$752,000.00 and Creditor's secured claim is \$377,622.39. *Id.* at 5:7-9. Debtor asserts there being a 44% equity cushion for Movant, but it is not clear if Debtor claims that the bankruptcy estate has such equity cushion as property of the estate.

#### Necessary for Reorganization

Debtor states the Property is necessary for an effective reorganization because the Property is required to continue operating and growing its business.

### **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$377,350.77 (Movant's Information Sheet, Dckt. 23), while the value of the Property is determined to be \$752,000.00, as stated in Schedules A/B and D filed by Debtor. Dckt. 1.

#### **11 U.S.C. § 362(d)(1)**

##### **Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or

foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

## **11 U.S.C. § 362(d)(2)**

### **Grant Relief for Lack of Equity**

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

Movant asserts that Debtor is neither the owner of record of the Property nor the borrower of record of Movant's loan. Motion, Dckt. 19 at 3:19-20; *see* Exhibit 1, Dckt. 22; *see also* Exhibit 2, Dckt. 22. Movant further points to Debtor's Schedule A, which states Debtor's 'equitable interest' in the Property is valued at \$0.00. Dckt. 19 at 3:20-21; *see* Petition, Dckt. 1 at 13. Movant states that, because Debtor is not the borrower of record and has not assumed the debt, Debtor does not have standing to reorganize this debt. Dckt. 19 at 3:21-23.

Debtor, however, has provided evidence that they have a thirty (30) percent interest in the property that was never recorded. However, as correctly addressed by the creditor, Debtor's schedules state that the property interest is only an "equitable interest" with a value of "\$0.00". Schedule A/B, Dckt. 1. Therefore, it is unclear to the court that even with a thirty (30) percent property interest, with a value of \$0.00, how there is any equity for the Creditor.

### **Questions Arising From Motion and Opposition**

Movant asserts there being twenty-two (22) monthly pre-petition defaults. Thus, as of the filing of this case, the debt owed to Movant would be two years (rounding up two months) in default.

In the Opposition, Debtor in Possession makes a point of stating that the bankruptcy estate will forfeit the interests in the Property if the Debtor stopped operating as a "home based business." It is affirmatively stated that "At no time has Debtor stopped operating as a home based business." Opposition, p. 3:15; Dckt. 37. The Opposition direct the court to the Declaration of Kathy Jones for evidence of this assertion.

Looking at the pleading titled "Declaration of Kathy Jones in Support of Debtor's Opposition on Motion for Relief Form the Automatic Stay," the court first notes that it does not say that Kathy Jones does declare, but:

I, KAMCARE, LLC declare as follows: . . . .

Declaration, p. 1:20; Dckt. 38.

KAMCARE, LLC then states that it is the managing member and representative of the Debtor. *Id.*, p. 1:20.

The testimony under penalty of perjury states that:

Debtor is a multi-member LLC that was formed in 2016 and provides various personal services to the public. These services include transportation need, personal assistance service, hauling, non-construction clean outs and companionship.

*Id.*, ¶ 4. Further, that Debtor “operates from the Property under a commercial lease with Kaitlin A. Jones, Trustee for Kamlomar Family Irrevocable Trust dated July 28, 202 (the ‘Trust’).” *Id.*

Looking at Schedule A/B filed by Debtor, the information provided there about assets of the Debtor as of filing consist of:

- A. Cash and Bank Account funds.....Value \$800.00.
- B. No
  - 1. Accounts Receivable
  - 2. No Deposits
  - 3. No Investments
  - 4. No Inventory
- C. Office Equipment.....Value \$20,223.00
- D. One 2006 Truck (listed as stolen)..Value \$ 5,000.00
- E. A Non-Residential Lease Agreement  
with Kaitlin Jones, Trustee.....Value “Unknown”
- F. 9589 Mainline Drive Property  
Single Family Residence  
Current Book Value of Debtor’s Interest.....\$0.00  
Current Value of Debtor’s Interest.....\$752,000
- G. Business License.....Value “Unknown”
- H. Mailing List.....Value “Unknown”
- I. Liability Insurance.....Value “Unknown”
- J. Real and Personal Property Insurance....Value “Unknown”

K. Insurance Claim (Stolen 2006 Truck).....Value “Unknown”

L. Dishonesty Bond.....Value “Unknown”

Schedule A/B, Dckt. 1.

The above financial and asset information is provided under penalty of perjury by Kathy Jones, the Managing Member of Debtor, certified to being true and correct.

On Schedule G, which Ms. Jones states under penalty of perjury, a Non-residential Lease Agreement with a Monthly Amount of \$2,145 is listed. The other party of the lease is the Kamlomar Family Irrevocable Trust. The lessor and the lessee under such lease are not identified. Dckt. 1.

On Schedule H, which Ms. Jones states under penalty of perjury, a “Kathy Jones” is listed as a co-debtor on an obligation to American Express (Schedule E/F claim) and an obligation to the Kamlomar Family Irrevocable Trust (Schedule G lease). *Id.*

On March 16, 2022, an Amended Petition and Amended Statement of Financial Affairs were filed by Debtor. Dckt. 30. On the Statement of Financial Affairs, the information being made by Kathy Jones under penalty of perjury, states that the Debtor’s **gross** income for the three prior full years (this bankruptcy case having been filed on January 18, 2022) before the bankruptcy case was filed are:

January 1, 2021 - December 31, 2021.....\$2,400 Gross Revenue

January 1, 2020 - December 31, 2020.....\$3,000 Gross Revenue

January 1, 2019 - December 31, 2019.....\$2,810 Gross Revenue

This information under penalty of perjury would indicate that there is no business being operated by Debtor which generates any meaningful income or have any meaningful ability to pay creditors.

This appears to conflict with the “testimony” of KAMCARE, LLC under penalty of perjury in the Declaration signed by Kathy Jones, Managing Member (Dckt. 38), stating:

4. Debtor is a multi-member LLC that was formed in 2016 and provides various personal services to the public. These services include transportation needs, personal assistance services, hauling, non-construction clean outs and companionship. Debtor operates from the Property under a commercial lease with Kaitlin A. Jones, Trustee for Kamlomar Family Irrevocable Trust dated July 28, 2020 (the "Trust").

Such wide ranging business operations appear to be grossly inconsistent with the Gross Revenue information provided under penalty of perjury.

Copies of the deeds and transfer documents for the real property in which the Debtor states its interest has a value of \$752,000 are provide as Exhibits A, B, and C with the Opposition. Dckt. 30. Exhibit A is a copy of the Quitclaim Deed from the estate of Mildred Wilson to Kathy Jones. Kathy Jones is the transferor, as the Administrator for the Estate of Mildred Wilson and the transferee,

transferring the Property to herself.

The Kathy Jones Administrator to Kathy Jones Transferee states that the transfer because it is being recorded in connection with a transfer of residential real property to an owner-occupier. Thus, it appears that when the transfer was made, it was to Kathy Jones Transferee as an owner-occupier of this residential Property.

Exhibit B is a Quitclaim deed is a transfer from Kathy Jones, the owner Transferor, to Kaitlin A. Jones, Trustee of the Kamlomar Family Irrevocable Trust. This Quitclaim Deed also states that it is exempt from fees because it is a transfer of residential property to an owner-occupier.

Exhibit C is identified as a copy of a document titled "LEGAL EQUITABLE PROPERTY OWNERSHIP. The interest is described as:

KAITLIN A. JONES TRUSTEE FOR KAMLOMAR FAMILY IRREVOCABLE TRUST, 07/28/2020; KAMLOMAR FAMILY IRREVOCABLE TRUST, LEGAL PROPERTY OWNER RECORDED ON 08/05/2020, 2:17:20 PM AS DOCUMENT NO 202008051685, TITLES 1, PAGES 2 FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGE, KAMCARE LLC (CA201528310069/FEIN81-0719452) SHALL VEST IN PART (30%), ABSOLUTE OWNERSHIP OF THE FOLLOWING REAL PROPERTY IN THE CITY OF ELK GROVE, COUNTY OF SACRAMENTO, CALIFORNIA, LOT 174, AS SHOWN ON THE "VESTING MAP OF FIELDSTONE UNIT NO. 3 RECORDED ON BOOK 287, MAP NO 3 RECORDS OF SAID COUNTY: APN 134-0840-067-0000.(STREET ADDRESS: 9589 MAINLINE DRIVE, ELK GROVE, CA 95624).

This acknowledges that "valuable consideration" was given and received for this interest in the Property. There is then vested a "(30%) Absolute Ownership" in the Property.

Exhibit C continues, stating that the whole or any part of the Property shall be used to carry out or conduct the day to day business of KAMCARE, LLC, and,

IF SAID PROPERTY IS NO LONGER USED AS A HOME BASED BUSINESS FOR KAMCARE LLC FOR ANY REASON, THEN THE PROPERTY SHARE INTEREST OF 30% SHALL AUTOMATICALLY GO BACK TO KAMLOMAR FAMILY IRREVOCABLE TRUST, 07/28/2020, BENEFICIARY(S), HEIRS, SUCCESSOR IN INTEREST AND ASSIGNS IN ITS ENTIRETY IN ACCORDANCE WITH THE PROVISIONS OF THE KAMCARE LLC OPERATING AGREEMENT OR ANY APPLICABLE AGREEMENT, THEREIN.

This is the Provision referenced by the Debtor in Possession in stating that if it stops using the property for its "In Home Business," then the Property interest will be forfeited. This language in the second part of the Document is inconsistent with the granting of the 30% Absolute Ownership in the Property.

The Members of KAMCARE, LLC signing the LEGAL EQUITABLE PROPERTY OWNERSHIP Document are Kaitlin A. Jones, as the Trustee of the Kamlomar Family Irrevocable Trust

member of Debtor (as well as the Transferor to Debtor of the 30% absolute interest), Marcus Sanders, Sr., Moddy Jones Perry, and Kathy Jones.

In signing this, the Members of KAMCARE, LLC, “certify and acknowledge on this day that being of the contents of the instrument, we freely agree and executed the same voluntarily on this 2nd day of August, 2020.” It is unclear what this means, other than there were “being of the contents of the instrument [there being no “instrument” identified], they signed at the bottom of the LEGAL EQUITY PROPERTY OWNERSHIP.

Looking at the signatures, no person as managing member signed the LEGAL EQUITY PROPERTY OWNERSHIP. When transfer of interest documents are signed, it is the transferor that signs the document, not a transferee.

Looking at Schedule E filed by Debtor (Dckt. 1 at 22), the Debtor lists having an \$11,584.49 asserted tax liability owed to the Internal Revenue Service. It is not identified what federal tax liability that this limited liability company would owe to the Internal Revenue Service.

On Schedule F (*Id.*), American Express is listed as a creditor having a claim for \$0.00, and Kaitlin A Jones, as Trustee for the Kamlomar Family Irrevocable Trust has a claim of \$7,000 for Rent Due. This information indicates that the Debtor is leasing the Property in which it has a 30% Absolute Ownership of and is paying money to the Kamlomar Family Irrevocable Trust. As shown from the Gross Income information provided under penalty of perjury on the Schedules, Debtor had no ability during the three years prior to filing this bankruptcy case to pay rent (which on Schedule G is listed to be \$2,145 a month) to rent the Property in which Debtor is a 30% Absolute Owner.

It appears that there is significant conflicting information provided under penalty of perjury. It appears that there are significant inter-related persons who are members of the debtor, managing members of the debtor, and then doing business in their own self-interests with the Debtor.

At the hearing, ~~XXXXXXXXXX~~

~~Based upon the evidence submitted to the court, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.~~

#### **~~Request for Waiver of Fourteen-Day Stay of Enforcement~~**

~~Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.~~

~~Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.~~

~~No other or additional relief is granted by the court.~~



~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion for Relief from the Automatic Stay filed by U.S. Bank Trust National Association (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 9589 Mainline Drive, Elk Grove, CA 95624 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.~~

~~No other or additional relief is granted.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Chapter 7 Trustee on March 14, 2022. By the court’s calculation, 45 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Relief from the Automatic Stay is denied as moot as to the Debtor, and XXXXXX .**

Lakeview Loan Servicing, LLC (“Movant”) seeks relief from the automatic stay with respect to Leonard Steven Pesta’s (“Debtor”) real property commonly known as 2644 Gold Court, Placerville, California 95667 (“Property”). Movant has provided the Declaration of Melissa Riley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made five (5) post-petition payments, with a total of \$16,729.87 in post-petition payments past due. Declaration, Dckt. 34; *see also* Summary Sheet, Dckt. 36. Movant also provides evidence that there is are four (4) pre-petition payments in default, with a pre-petition arrearage of \$13,085.24. *Id.*

The court notes Movant has not clearly requested whether relief be granted as to the Debtor or the property of the bankruptcy estate. 11 U.S.C. § 362(a) provides a series of automatic stay

provisions which give rights and protections to the debtor on the one hand, and the bankruptcy trustee, bankruptcy estate, and the interests of creditors with unsecured claims or junior lien secured claims on the other hand. As there are different provisions for different entities, Movant's request should clearly state whether they are requesting relief as to the Debtor or the Bankruptcy Estate.

At the hearing, **XXXXXXXXXX**

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$607,637.79 (Motion, Dckt. 32), while the value of the Property is determined to be \$720,800.00, as stated in Schedules A/B and D filed by Debtor.

### **Relief Requested**

In the Motion for Relief From the Stay, Movant focuses just on the Debtor, arguing why it should be granted relief from the stay as to the Debtor. Movant does not address why relief from the automatic stay should be given with respect to the current owner of the Property – the Bankruptcy Estate in this Case. As discussed below, Movant's case indicates that grounds have not been shown for which relief from the stay may be granted as to the Bankruptcy Estate.

### **11 U.S.C. § 362(d)(1): Equity Cushion and Adequate Protection**

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][I] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.*

In this case, Movant has established the following equity cushion:

Value of Property.....\$720,800.00

Debt Secured by Asset.....(607,637.79)

Additional Liens,  
encumbrances, arrearages.....not listed

**Equity Cushion.....\$113,162.21.**

Movant states "Debtor does not have sufficient equity in the Property," however, laid out above, there is \$113,162.21 in equity. Therefore, it appears the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004).

Here, Movant's evidence and arguments show that the Bankruptcy Estate has \$113,162.21 in

equity in the Property to be administered by the Trustee. On March 6, 2022, the Chapter 7 Trustee provided Notice that there are assets to administer in this case and for creditors to file claims. April 6, 2022 Docket Entry Report, and Notice, Dckt. 43.

### **Relief as to Debtor**

Debtor was granted a discharge in this case on March 15, 2022. Dckt. 40. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor.

### **Relief as to Bankruptcy Estate**

As addressed above, the record reflects that there is \$113,162.21 equity cushion for the Debtor and Bankruptcy Estate in the Property. The Motion does not show why the stay should be terminated and the Trustee not allowed to administer this asset.

At the hearing, **XXXXXXX**

### **Request for Attorney's Fees**

Movant requests attorney's fees under 11 U.S.C. § 506(b). Under 11 U.S.C. § 506(b), fees are allowed if (i) the claim is an allowed, secured claim; (ii) the creditor holding the claim is over-secured; (iii) the fees, costs and charges are provided for by the agreement, or state statute, under which the creditor's claim arose; and (iv) the fees, costs and charges are reasonable. 4 Collier on Bankruptcy P 506.04 (16th 2022); *Eastman Nat'l Bank v. Sun 'n Fun Waterpark LLC (In re Sun 'n Fun Waterpark LLC)*, 408 B.R. 361, 366 (B.A.P. 10th Cir. 2009). Here, Movant has not established whether there is an agreement or statute that provides for attorney's fees. Additionally, Movant is stating that there is no equity for their claim which would suggest it is undercollateralized. Therefore, the court does deny Movant's request for attorney's fees under 11 U.S.C. § 506(b).

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees not pursuant to any provision. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the~~

hearing.

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The Motion for Relief from the Automatic Stay filed by Lakeview Loan Servicing, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are ~~not~~ vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2644 Gold Court, Placerville, California 95667 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Leonard Steven Pesta (“Debtor”), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

No other or additional relief is granted.

# FINAL RULINGS

3. [22-20651](#)-E-7 GARRETT TRAVIS  
[DBJ-1](#) Bruce Dwiggin  
TRI COUNTY BANK VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
3-31-22 [\[13\]](#)

**Final Ruling:** No appearance at the April 28, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney], Chapter 7 Trustee, and Office of the United States Trustee on March 31, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<b>The Motion for Relief from the Automatic Stay is granted.</b>
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Tri Counties Bank (“Movant”) seeks relief from the automatic stay with respect to Garrett Collin Travis’s (“Debtor”) real property commonly known as 5212 Akrich Street, Shasta Lake, California 96019 (“Property”). Movant has provided the Declaration of Ronald Scribner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made one (1) post-petition payment, with a total of \$620.59 in post-petition payments past due. Declaration, Dckt. 15; *see also* Summary Sheet, Dckt. 19. Movant also provides evidence that there is sixty-one (61) pre-petition payment in default, with a pre-petition arrearage of \$37,855.99. *Id.*

**CHAPTER 7 TRUSTEE’S NON-OPPOSITION**

Nikki B. Farris (“the Chapter 7 Trustee”) has no opposition to the relief requested. Trustee’s April 5, 2022 Docket Entry Statement.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$174,454.65 (Declaration, Dckt. 15). Additionally, Debtor owes foreclosure costs in the amount of \$7,667 and 10% cost of sale in the amount of \$17,500. The value of the Property is determined to be \$200,000.00, as stated in Schedules A/B and D filed by Debtor (Dckt. 21) and by Movant’s appraisal (Exhibit F, Dckt. 16 at 44.) Therefore, there appears to be an equity of only \$378.35.

Two additional payments of \$620.59 each for a total of \$1,241.18 will be due before this matter is heard. Dckt. 15 at ¶ 18. If not paid, the amount of \$200,862.83 will be due to Movant and there will be no equity in the Property. *Id.*

### **11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

It is unclear to the court whether there is equity in the home. The debt secured by the asset is \$174,454.65, and debtor owes additional foreclosure and sale costs. Therefore, there appears to be some equity. However, due to the significant amount of past due payments, the court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure

4001(a)(3), and this part of the requested relief is not granted.

### **Request for Attorneys' Fees**

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees "as allowed under applicable non-bankruptcy law"). No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Tri Counties Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 5212 Akrich Street, Shasta Lake, California 96019 ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.